No. 96-1925

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

CATERPILLAR INC.,
Petitioner,
v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its affiliated LOCAL UNION 786,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF ON BEHALF OF AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION AS AN AMICUS CURIAE IN SUPPORT OF RESPONDENTS

PHILLIP D. BRADY
AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION
1401 H Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 326-5500

WILLIAM J. RODGERS
Counsel of Record
THOMAS A. THOMPSON
COLLIER, SHANNON, RILL & SCOTT, PLLC
3050 K Street, N.W.
Washington, D.C. 20007
(202) 342-8400

Counsel for Amicus Curiae

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12 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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This brief is submitted in support of the respondents. Counsel for all parties have consented to the filing of this amicus brief, and their letters of consent have been filed with the Clerk of the Court.[1]

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[1] Pursuant to Rule 37.6 of the United States Supreme Court Rules, AAMA states that no person or entity, other than AAMA or its members, contributed to the cost of preparing and submitting this brief.

THE INTEREST OF AMICUS CURIAE

The American Automobile Manufacturers Association ("AAMA") is a non-profit trade association whose three members, Chrysler Corporation, Ford Motor Company and General Motors Corporation (the "Companies"), together produce approximately 80% of the cars and trucks manufactured in the United States. AAMA has often represented its members before this Court and other tribunals. AAMA has no parent company, subsidiaries, or affiliates that have issued shares or debt securities to the public.

AAMA's purpose in submitting this brief is to apprise the Court of the industry context in which this case should, in our view, be approached. As such, we will not attempt to add extensively to the various legal arguments made by the parties, but wish to make clear that this case has far-reaching ramifications in the labor management and industrial operations areas that are beyond the specific issues that exist between the parties.

AAMA's members have longstanding collective bargaining relationships with several labor organizations, including the United Automobile Workers (the "UAW"). Most of these relationships have existed for over fifty years. Today, over 400,000 of our members' employees are represented by respondents.

Over many years of collective bargaining, our members and the unions that represent their employees have negotiated numerous joint labor management committees, including committees responsible for health and safety, apprentice programs, employee assistance programs, fringe benefits, ergonomics, and quality committees, among others.[2]

[2] These joint activities are established in accordance with the Labor Management Cooperation Act of 1978, Pub. L. 95-524, 92 Stat. 1990, which authorizes joint labor management committees for the purpose of improving labor management relationships, job security and organizational effectiveness, enhancing economic development, and involving workers in decisions affecting their jobs.

These committees utilize union representatives who are extensively trained to help operate the committees, with broad knowledge of and experience in the business requirements of their work. In addition, the Companies have one of the world's most sophisticated grievance procedures. Hundreds of thousands of grievances are processed each three-year contract term.

For decades, the joint labor management committees, the grievance procedure and other aspects of contract administration have utilized full-time employee representatives who continue to be paid the same wages and benefits that they would have earned by working on their prior job assignments. These employee representatives are paid on the same basis as the bargaining unit employees they represent and thereby are not disadvantaged for exercising their statutory right to engage in union activities.[3] All of these benefits are openly bargained for and set forth in detail in collective bargaining agreements ratified by the membership. The details of these practices are well-known to the U.S. Department of Labor and the U.S. Department of Justice.

AAMA's members have a vital interest in the outcome of this case. Whatever the Court decides, we urge that its ruling be limited to not preclude the longstanding practice of compensating employee representatives engaged in the activities described above. The decision in this case will have a direct and vital bearing on the continued viability and effectiveness of grievance procedures and cooperative labor management committees in which AAMA's members participate. In light of the disruptive effect that an adverse decision could have on the U.S. automobile industry, AAMA respectfully submits this brief amicus curiae.

[3] Section 8(a)(2) of the National Labor Relations Act of 1935, as amended, 29 U.S.C. 158(a)(2), expressly permits "no docking" practices for this very reason.

SUMMARY OF ARGUMENT

U.S. automobile manufacturers have developed an extensive framework of joint activities with the UAW covering over 400,000 UAW-represented employees in the U.S. These joint programs are implemented, for the most part, by a combination of company personnel and specially trained union representatives. In addition, the union representatives process hundreds of thousands of grievances each contract term on behalf of represented employees. The Companies pay these representatives the same wages and benefits while engaged in representational activities that they would have received on their prior job assignments. The Companies make these payments in reliance on the language of Section 302(c)(1) of the Labor-Management Relations Act of 1947 (the "LMRA"), 29 U.S.C. § 186(c)(1), as supported by its legislative history and applicable case law.

In the view of AAMA's members, a finding that these payments are illegal or, worse, constiute an indictable crime, would be prejudicial to the Companies and their employees represented by the UAW. This is especially true since this framework of labor management cooperation, based upon Section 302(c)(1), has gone unchallenged after decades of development. Such a determination not only would be unfair, but would significantly disrupt both the Companies' operating practices and the structure of collective bargaining relationships in the U.S. automobile industry.

ARGUMENT

I. A DECISION THAT DEPARTS FROM THE GENERALLY ACCEPTED CONSTRUCTION OF SECTION 302(C)(1) WOULD UNFAIRLY PREJUDICE EMPLOYERS WHO HAVE RELIED ON THE LANGUAGE, LEGISLATIVE HISTORY AND APPLICABLE CASE LAW OF THIS SECTION

After more than fifty years of collective bargaining, the practice of paying employee representatives engaged in representational functions in the grievance procedure or serving on labor management committees has become part of the institutional fabric of industrial relations in the U.S. automobile industry. AAMA's members have relied on the language of Section 302(c)(1), its legislative history and applicable case law. If this practice is now deemed criminal after all these years of justifiable reliance, employers who have developed a system of industrial self-governance based thereon would be unfairly prejudiced. A decades-old system of industrial self-governance would be significantly impaired and the practical operation of automobile manufacturing plants would be compromised.

The statutory language on which the Companies have relied is as follows:

> The provisions of [LMRA Sections 302(a) and (b), 29 U.S.C. §§ 186(a) and (b)] shall not be applicable (1) in respect to any money or other thing of value payable by an employer . . . to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer . . .

LMRA Section 302(c)(1), 29 U.S.C. § 186(c)(1).

We submit that the Companies are justified in relying on this language to pay employees assigned to rep-

resentational activities of the type discussed herein. Furthermore, this practice is well-known and has been reviewed over the years in a variety of contexts by the Department of Labor and the Department of Justice.

The legislative history also supports this reliance. When Congress considered what is now Section 302(c)(1), it did so against the background of predecessor legislation that was clearly intended to preserve the existing practice of company pay to employees performing union duties. In the LMRA's conference report, for example, the conferees expressed approval for "allow[ing] shop stewards without losing pay to confer not only with the employer but with employees as well, and to transact other union business in the plant." H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 40 (1947).

Therefore, in the context of enacting the LMRA, there was no controversy as to this mode of operation—it was simply recognized as necessary to the continuation of existing law and practice. The statute contained a balance between Congressional concern about bribery, or improper payments, and the continuation of an existing practice that facilitated union management relations. It was in reliance on this balanced approach that employers and unions continued and expanded the pre-existing practice, so that it has now developed into a basic element of labor management relationships in the U.S. automobile industry. This was clearly, then, not the type of practice, or conflict of interest, that Congress sought to prohibit.

Our interpretation of the statute is also supported by applicable case law. *See, e.g., Toth v. USX Corp.*, 883 F.2d 1297, 1304 (7th Cir.), *cert. denied*, 493 U.S. 994 (1989) (Section 302(c)(1) permits payment of union leave benefits pursuant to a collective bargaining agreement); *Communications Workers of America v. Bell Atlantic Network Services, Inc.*, 670 F. Supp. 416, 418-21 (D.D.C. 1987) (finding that benefits granted em-

ployees who were on union leaves (for up to eighteen years) were acceptable under the Section 302(c)(1) exception); *BASF Wyandotte Corp. v. Local 227, Int'l Chem. Workers Union*, 791 F.2d 1046, 1049 (2d Cir. 1986) (there is nothing in the language or logic of Section 302(c)(1) to suggest that employers are not permitted to grant a *bona fide* employee paid time off in order to do union business).

We therefore submit that to overturn this longstanding practice would be unduly prejudicial.

II. A DECISION THAT CAUSES A REVERSAL OF PRESENT PAY PRACTICES WOULD HAVE A SERIOUS DISRUPTIVE EFFECT ON BOTH MANUFACTURING OPERATIONS AND THE STRUCTURE OF COLLECTIVE BARGAINING RELATIONSHIPS IN THE U.S. AUTOMOBILE INDUSTRY

It is of vital concern to AAMA's members that Section 302(c)(1) be read in accordance with its terms and as intended by Congress. Section 302(c)(1), narrowly construed, would severely disrupt the operation of critical joint labor management activities and the grievance procedure. Specifically, we are concerned about the adverse impact on joint labor management approaches to operations directed toward preserving jobs, improving worker safety, and operating more productively in today's global and intensely competitive automobile industry.

Commencing in the early 1980's, the auto companies and the UAW recognized a need to operate in a more cooperative and extensive manner than had previously been the case. This recognition was based upon the deterioration that had occurred in the domestic automobile industry as a result of a variety of factors, from the oil shortage of the 1970's to the surge of foreign competition in the industry. As a result, the Companies and the UAW embarked on a variety of joint programs to enhance the efficiency and productivity of domestic manufacturers and thus protect the jobs of their workers.

These programs included greater union and employee participation than had ever before been undertaken. As a result, the industry now has joint union management programs for employee education and development, worker quality and efficiency, safety, employee assistance to aid workers with personal and family problems, and joint ergonomics activities, among many other similar programs. Union representatives also participate in numerous bargaining committees addressing difficult competitive issues facing our industry, such as outsourcing, subcontracting, work standards, new technology, and other issues affecting job security.

The administration of these efforts, now undertaken by company personnel along with union representatives, requires significant training and expertise on the part of full-time participants. These are not the types of activities that can be performed well on a part-time basis, or as an adjunct to a production job. In addition to performing traditional representation duties, such as dispute resolution via the grievance process, these representatives, trained and experienced, provide a significant service to the Companies, bargaining unit employees and the unions in administering the joint union management programs.[4]

Industrial self-governance is the cornerstone of federal labor policy. *See United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). Union representation plays a key role in the system of industrial self-governance, and the agreements in effect between AAMA's members and the UAW provide for the payment of wages and benefits to

[4] In addition, from an operational point of view, it is counterproductive to have union representatives periodically leave their workstations each time an employee has a representation matter as compared to the present system of having full time representation to handle matters as they arise.

union representatives performing these representation functions. A ruling from this Court that limits these practices would cause a fundamental disruption of some of the most beneficial programs found in labor management relationships.

CONCLUSION

For all of the foregoing reasons, the judgment of the United States Court of Appeals for the Third Circuit should be upheld.

Respectfully submitted,

PHILLIP D. BRADY
AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION
1401 H Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 326-5500

WILLIAM J. RODGERS
Counsel of Record
THOMAS A. THOMPSON
COLLIER, SHANNON, RILL & SCOTT, PLLC
3050 K Street, N.W.
Washington, D.C. 20007
(202) 342-8400

Counsel for Amicus Curiae